



PETITION IN SUPPORT OF THE ALASKA LIFE AT CONCEPTION ACT | HB 178

Dear Mr. Dunleavy, Alaska House Representatives, and Alaska State Senators,
2020 marks the 50th year of legalized abortion in Alaska making Alaska one of the most progressive and abortion friendly states in America.

IT IS TIME FOR ACTION IN OUR LEGISLATURE AND EXECUTIVE OFFICE

The Life At Conception Act has been refused a committee hearing for nearly three years because Planned Parenthood endorsed and funded Democrats chair the House Health and Social Services Committee (HSS) and continue to violate Rule 24(a) of the Alaska State Legislature Uniform Rules which requires committees to act on all bills referred to them.

On January 29, 2020, only nine House Republicans voted in favor of moving the bill out of HSS to another committee which may have acted on the bill. The rest of the House Republicans aligned with Planned Parenthood's proxies in the House and prevented the bill's move.

I understand the bill will not pass in the current legislature, but babies waiting to be born deserve to have the bill presented, debated, and voted on according to the laws and rules of our representative form of government.

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I am especially disturbed to know that Republicans voted against moving the bill because they did not have full knowledge of the bill's contents or that they did not have advanced warning of the motion to move the bill.

Since this was a procedural vote - and not a vote on the merits of the bill, these excuses absolutely inexcusable.

If our Republican representatives cannot vote on a simple procedural move to allow the Life at Conception Act to be debated, how can we ever trust them to stand for life and vote correctly to pass or oppose the bill on its merits?

Moreover, we did not send Republicans - who claim to honor the party platform and advocate for protecting children from the moment of conception - to Juneau on our behalf to vote their beliefs. We sent them to vote OUR BELIEFS, chief among those is that babies must not be killed.

IT IS TIME TO END THE SPEND ON ABORTION AND REFUSE TO PAY FOR A SINGLE BABY TO BE KILLED

I understand there is much confusion among our elected representatives from the Governor to the most recently appointed House Representative. Allow me and Alaska Right to Life to clarify things for you:

TWO COURT DECISIONS DEFINE THE DEBATE

Alaska's courts handed down two decisions that put us in the position of paying for babies to be killed in Alaska:

1. 1997 Valley Hospital v Mat-Su Coalition for Choice. In this case Supreme Court Chief Justice Compton stated that the Court has “a duty to develop additional constitutional rights and privileges under this constitution,” which must be one of

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the most blatant violations of the constitution since Article 4 of Alaska’s constitution gives no such power to the courts.

- Chief Justice Compton went on to say the newly created “right to abortion” is protected by the right to privacy found in Article 1, Section 22. However, in referencing this right, Chief Justice Compton failed to recognize the second part of the Section which states, “this section shall be implemented by the legislature,” thus violating the court’s power and the legislature’s constitutional authority.
- 2. 2001 Planned Parenthood v State of Alaska. Building upon their constitutional abomination of 1997, Alaska’s Supreme Court declared that since “abortion is a fundamental and constitutional right,” then funding for abortions is also a “constitutional right” for Medicaid recipients under the equal protection clause.
 - Chief Justice Fabe also used the legislature’s power to define what rights are protected by the right to privacy which is unique to Article 1, Section 22 of Alaska’s constitution.

In two court decisions Alaska became one of the most extreme and abortion friendly states in the nation with court created constitutional rights to abortion and abortion funding for Medicaid recipients.

ALASKA’S LEGISLATURE HAS PROHIBITED ABORTION FUNDING 12 TIMES IN 18 YEARS.

The Legislature’s continued to fight against abortion expansion by aligning Alaska’s Medicaid system with the federal system which prohibits abortion funding under the Hyde Amendment.

This action led to the 2001 Planned Parenthood v State of Alaska decision that declared abortion funding to be a constitutional right.

Following that 2001 decision, the legislature prohibited abortion funding in the 2002 Operating Budget.

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- Governor Tony Knowles’ veto of that abortion funding prohibition was overturned by a supermajority of the legislature and became part of the 2002 Operating Budget.
 - The legislature was exercising its express power to make appropriations according to Article 9, Section 13 of Alaska’s constitution which states, “no obligation for the payment of money shall be incurred except as authorized by law.”
- The Superior Court then ordered the State to pay every abortion invoice submitted on behalf of Medicaid recipients.
- Pro-Choice Attorney General Bruce Botelho recommended that Governor Knowles recommended that Governor Knowles pay for abortions, preferring to obey a Superior Court order rather than legally enacted appropriations law.

Alaska’s legislature has prohibited abortion funding 12 times since 2001. It is unclear what those legislatures expected: would the executive branch enforce the budget signed into law, or would the governor follow Governor Tony Knowles’ example of paying for babies to be killed even after the legislatures prohibited any state money from being spent on abortion?

Alaska’s attorney generals have had a profound effect on Alaska’s abortion problem.

PRO-CHOICE ATTORNEY GENERAL INFLUENCE

Every Attorney General (including Kevin Clarkson) has referred to pro-choice, liberal Democrat Attorney General Botelho who issued the first AG recommendation that the State obey a Superior Court order instead of the Constitutionally passed budget.

Attorney General Botelho wrote in 2001:

*“These provisions specifically state that **no money appropriated may be expended for an abortion**... It further declares that **this is not a statement of intent** nor mere description, **but a statement of purpose.**”*

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Mr. Botelho then reminded Governor Knowles that, ***“a veto of this provision is no longer available...”*** because he had already vetoed this line of the budget and the legislature overturned his veto with a supermajority vote.

Mr. Botelho’s encouragement to pay for babies to be killed in opposition to the legislature’s prohibition of abortion funding continued in 2002 when he wrote:

“We obeyed the superior court’s order, and ***we advise you to*** continue to obey it: i.e., to ***continue to pay for*** these medically necessary ***abortions*** until such time, if any, as a court advises you that you do not have the authority to do this.”

Beginning in 2001, 18 attorney general reviews have violated Alaska's constitution and the Separation of Powers doctrine that would normally prevent the Judiciary from using the Legislature's sole and exclusive appropriation powers.

Compare these attorney general budget reviews from 2001 and 2019

“...no money appropriated may be expended for an abortion... This provision is intended to prevent expenditures for therapeutic or medically necessary abortions from these appropriations, though the department is currently under a court order to operate its Medicaid program in a constitutional manner by providing payment for these abortions. This matter is presently on appeal to the Alaska Supreme Court. State of Alaska, Dept .of Health & Social Services v. Planned Parenthood of Alaska, Supreme Court No. S-9109 (filed 4/30/99). Consequently, the provision is also intended to prevent the department from providing funds for these abortion services if the Alaska Supreme Court determines that the state must provide these services in order to operate its Medicaid program in a constitutional manner. The department could then be faced with a ruling that the limit on abortion services results in the operation of the Medicaid program in an unconstitutional manner but without the funds available to pay for services to operate the program legally.

- Attorney General Botelho, 2002 Operating Budget Review

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“...the legislature provides that no money may be expended for an abortion... As we have opined previously, this language is intended to prevent expenditures from these appropriations for therapeutic or medically necessary abortions; however, the department is under a superior court order to operate its Medicaid program in a constitutional manner by providing payment for therapeutic or medically necessary abortions. That superior court order has been upheld by the Alaska Supreme Court which specifically rejected an argument that the separation of powers doctrine precluded the superior court from ordering the state to pay. Thus, the department is faced with a ruling from the state's highest court that the limit on payment for abortion services results in the operation of the Medicaid program in an unconstitutional manner, while the department is ostensibly without the money available to pay for services to operate the program legally.

- Attorney General Clarkson, 2020 Operating Budget Review

By treating pro-choice Attorney General ***opinions as binding precedent*** for nearly 18 years, our state's top lawyers, executives, and legislatures have allowed the Judiciary to nullify our constitution and sentence thousands of babies to death.

SURRENDER IN THE LEGISLATURE

The Legislature, including our current elected representatives, have allowed the Courts to violate the constitution and Separation of Powers Doctrine by sitting idly as the Court invalidates the legislature's budget and initiates spending that the legislature has lawfully and constitutionally prohibited.

Article 1, Section 22 of Alaska's Constitution states:

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“The right of the people to privacy is recognized and shall not be infringed.
The Legislature shall implement this section.”

The constitution clearly states, ***“The legislature shall implement this section,”*** but this hasn’t stop the courts from using the right to privacy to protect their 1997 decision declaring abortion to be “a constitutional right” nearly 100 times.

And the legislature has refused to exercise their constitutional and legislative authority to either hold the courts accountable for their abuse of the privacy right or to exclude abortion from the right to privacy.

Moreover, Article 9, Section 13 tells us that, ***“No money shall be withdrawn from the treasury except*** in accordance with appropriations made ***by law***. No obligation for the payment of money shall be incurred ***except as authorized by law.”***

Since the State cannot be obligated to pay money except by law, and since no money can be spent except by law, it’s important to know how laws are made:

“The legislature shall establish the procedure for enactment of bills into law... No bill may become law without an affirmative vote of a majority of the membership of each house.”

- Article 3, Section 14 of Alaska’s Constitution

Over nearly 20 years the legislature has allowed the courts to take its constitutional power to define the limits of privacy, to obligate the State to spend money, and to spend money that the legislature has prohibited in its appropriations bills.

INEFFECTIVE EXECUTIVES

Why would a Republican Governor who campaigns as a pro-life candidate, speaks at pro-life rallies continue to pay for babies to be killed when the legislature prohibits those same payments?

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If members of the legislature have the power to prohibit abortion funding from the State's Operating Budget, only a pro-choice governor would even attempt to veto such an amendment.

That's what pro-choice Governor Tony Knowles did in 2001, but his veto was overridden by a supermajority of the legislature. Governor Knowles still paid for babies to be killed in violation of the 2002 Operating Budget he signed into law. He simply used the courts' decisions and orders as legal cover for violating the law.

Assuming every Pro-Life Governor would sign a bill prohibiting abortion funding into law, it seems logical that abortion payments would stop the day the annual operating budget is signed into law.

Moreover, why would a governor sign a bill into law that he does not intend to enact and enforce?

For example, Governor Bill Walker never intended to enact or enforce the Abortion Marketing in Schools and Parental Rights Act of 2016, HB 156. Possibly fearing a veto overturn, Governor Walker allowed the bill to become law without signature under Article II, Section 17 of Alaska's Constitution.

Governor Knowles knew he didn't have the votes in the legislature to support a veto of the abortion prohibition amendment to his budget – he tried, and his vetoes were overturned by a supermajority of the legislature. So, Governor Knowles accepted the prohibition in the budget and used his pro-choice attorney general's review of the budget as the basis for continuing abortion payments in direct opposition to the 2002 operating budget he signed into law.

However, in the current political climate and the extremely abortion friendly makeup of both houses of the legislature, were Governor Dunleavy to veto the abortion prohibiting amendment to the 2020 Operating Budget, that veto would be gladly accepted by a majority of House Representatives and Senators.

Unlike Governors Walker and Knowles, Governor Dunleavy has the votes in the legislature to support vetoing the abortion funding prohibition if he didn't intend to

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enact and enforce that portion of the budget, but he didn't veto the legislature's amendment prohibiting abortion funding.

If Governor Dunleavy didn't intend to enact the abortion funding prohibition in the 2020 Operating Budget, why didn't he veto that amendment?

Why did Governor Dunleavy leave the amendment in the budget if he had no intention of enacting that portion of the budget? Perhaps Governor Dunleavy fears Planned Parenthood's proxies in the legislature more than he fears his pro-life constituents and voters.

One thing is certain though: since Governor Dunleavy continues to pay for babies to be killed, it seems he never intended to enact or enforce the abortion funding prohibition that he signed into law July 8, 2019.

ABORTION IS NOT A CONSTITUTIONAL RIGHT

ABORTION ACTIVIST JUDGES AND JUSTICES

Alaska's Courts have been hell-bent on creating and protecting "the right to abortion" since 1997.

Alaska's Supreme Court stated in the 1997 Valley Hospital v Mat-Su Coalition for Choice case that they had "a duty to develop additional constitutional rights and privileges under this constitution," and that, "abortion is a fundamental and constitutional right." That statement was meant to change - amend - our constitution to create a new fundamental (think life, liberty, the pursuit of happiness) and constitutional right.

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JUDGES DO NOT CREATE RIGHTS

Our constitutions do not create rights.

They recognize and protect rights.

Think of freedom for slaves and suffrage for women.

Those rights were not created.

They already existed, were withheld, and finally recognized and then protected.

Therefore, judges and justices - servants of the constitution - do not create rights.

In the case of abortion, there is nothing in either the U.S. or Alaska Constitution that hints at a constitutional right to kill babies.

AMENDING THE CONSTITUTION

Article 12, Section 1 of the Alaska Constitution outlines the process for constitutional amendments.

The legislature must initiate the constitutional amendment, pass it by a 2/3 vote, and then we - the voters - must approve the amendment by a majority vote on a statewide ballot.

Judges and justices are not included in the constitutional amendment process.

So if we recognize that Chief Justice Compton's 1997 declaration that the courts have "the duty to develop additional constitutional rights and privileges" means that he and the courts intended to change – amend – the constitution, then Article 12 clearly renders that declaration unconstitutional, unlawful, and unenforceable.

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JUDGES DO NOT HAVE THE AUTHORITY TO CHANGE THE CONSTITUTION

Claiming a "duty to develop additional constitutional rights and privileges under this constitution" was a bold violation of their oath to uphold and defend the Constitution of the State of Alaska and effectively nullified Articles 4 and Article 12 of the constitution.

That 1997 Supreme Court decision should have resulted in the entire Supreme Court's impeachment according to Article 4, Section 12 of the constitution for "malfeasance of [their] performance of [their] official duties."

Instead, thousands of babies have been killed because our elected representatives in the legislature and governor's office have allowed the courts to violate the constitution, obeyed their decisions and orders, and have treated unconstitutional decisions as laws to be enforced.

ABORTION FUNDING IS NOT A CONSTITUTIONAL RIGHT

ALASKA'S JUDGES DOUBLE DOWN ON ABORTION

Doubling down on their 1997 decision, Alaska's Courts declared that since they created the constitutional right to abortion, then they could create a constitutional right to public money for abortions in the 2001 Planned Parenthood v The State of Alaska decision that resulted in the court declaring any budget that even restricts abortion funding as unconstitutional.

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COURT ORDERED ABORTION PAYMENTS

The Superior Court followed that 2001 decision by ordering the State of Alaska's Health and Social Services administration to pay every abortion claim filed on behalf of a Medicaid recipient regardless of any law or budget (which is also a law) that either prohibits, or simply does not authorize those payments

JUDGES NULLIFY THE CONSTITUTION

By ordering the State to make a payment that the legislature did not authorize, the Courts again nullified Alaska's constitution and violated the Separation of Powers doctrine, which give the sole and exclusive authority to initiate spending to the Legislature.

It's as if a judge took your debit card out of your wallet, went to the grocery store and bought his groceries with your money, but not your permission. That would normally be a crime.

But if you never press charges, the criminal will go free, emboldened to do it again.

And that is exactly what Alaska's elected representatives and governors have done for over 20 years. Silence and impotence only serve to embolden lawbreakers.

UNCONSTITUTIONAL COURT DECISIONS BEGET UNCONSTITUTIONAL COURT ORDERS

Since the basis for abortion and abortion funding was the 1997 unconstitutional and unlawful decision, then the decision declaring abortion funding to be a constitutional right is equally unconstitutional and unlawful.

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CONSTITUTIONAL AUTHORITY TO STOP PAYING FOR ABORTIONS

FAITHFUL EXECUTION OF THE LAWS

Article 3, Section 16 outlines the governor's duty and authority:

"The governor shall be responsible for the ***faithful execution of the laws.***"

Unconstitutional and unlawful court decisions and orders are not laws the governor must "faithfully execute."

To execute unconstitutional laws or, in this case, court decisions and orders, would violate the law and constitution.

Since abortion funding and payments are based upon unlawful and unconstitutional court decisions and orders, the governor could be breaking the law by paying for abortions.

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AUTHORITY TO PROTECT LIFE AND LIBERTY

Article 3, Section 16 continues:

***"He may, by appropriate court action or proceeding brought in the name of the State...
restrain violation[s] of any constitutional or legislative power, duty, or right..."***

If we recognize that Chief Justice Compton's 1997 declaration that the courts have "the duty to develop additional constitutional rights and privileges" means that he and ***the courts intended to change – amend – the constitution***, then ***Article 12 clearly renders that declaration unconstitutional, unlawful, unenforceable, and therefore to be restrained by the governor.***

If we recognize that Chief Justice Compton and Chief Justice Fabe's ***decisions violated the legislature's constitutional and legislative authority and power*** when they used the Article 1, Section 22 right to privacy, ***then those decisions and any orders stemming from them are unconstitutional, unlawful, unenforceable – and therefore to be restrained by the governor.***

Since the abortion decisions are unconstitutional and unlawful, ***no governor should be compelled to enforce or execute any decision or order based on the "constitutional right to abortion" and right to abortion funding.***

Since the abortion decisions are violations of the judiciary's constitutional authority, ***the governor has the authority to stop abortion payments.***

Since the abortion decisions are violations of the Separation of Powers doctrine and the legislature's power, then ***the governor has even more authority to stop abortion payments.***

THEREFORE: Governor Dunleavy has both the authority and duty to immediately stop paying for babies to be killed.

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PLANNED PARENTHOOD SUES TO KILL MORE BABIES

NURSE & MIDWIFE ABORTIONISTS

Acting on their insatiable desire to kill babies for profit, Planned Parenthood has initiated a lawsuit against the State of Alaska and the Board of Nursing to force the State to allow Nurses and Midwives to perform abortions.

Why would Planned Parenthood want to expand abortion procedures to midwives?

Simple: PROFIT.

A midwife or nurse-midwife is far less expensive labor than a physician, making the profit margin for abortions much better, and possibly allowing more abortions to be performed as well.

ALASKA'S EXTREME ABORTION LAWS LIMIT THE KILLING

Even Alaska's extreme abortion law, AS.18.16, limits child killing to "licensed physicians."

ALASKA'S BOARD OF NURSING

Every member of the Alaska Board of Nursing has been personally and individually named in Planned Parenthood's lawsuit.

The Board of Nursing members need to know their elected representatives and the State of Alaska will defend them and babies in court.

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THE GOVERNOR’S ROLE

The courts need to know that Governor Dunleavy will in no way enforce such a decision - his duty is to "faithfully execute the law," not unlawful court decisions. Such action would require newfound strength and courage from our governor, and he could count on me and thousands of others to support him.

IT IS TIME FOR ACTION IN OUR LEGISLATURE AND EXECUTIVE OFFICE

It’s time to make the Life at Conception Act law and I am calling on you to perform your duty and exercise your authority as my elected representatives to face the difficult but worthy task of being a voice for the voiceless in our state’s government.

It's time to defend those who can't defend themselves, whose rights and protections were stripped from them by previous legislatures, governors, and the courts.

It’s time to prevent the expansion of abortion into Alaska's midwiferies, stop paying for babies to be killed, and it's time to make the Life at Conception Act law and bring an end to abortion in Alaska.

For LIFE,

Patrick Martin
Alaska Right To Life